

U.S. Application No.: 10/048,123
Group Art Unit No.: 1625

REMARKS

The claims are 15-22, 25-35 and 42, with claims 15-21 and 34 being independent. Claims 1-14, 23, 24 and 36-41 have been cancelled without prejudice or disclaimer. Applicants specifically reserve the right to prosecute the subject matter of claims 36-41 in a subsequently filed continuation or divisional application. Claims 16-21 have been amended to read in independent form. Support for claim 42 may be found in the specification at page 3, line 37 to page 5, line 5. No new matter has been added.

The Examiner appears to have rejected claims 23 and 24 as being allegedly substantial duplicates of claim 22. Applicants respectfully disagree with the Examiner's characterization of these claims. However, because claims 23 and 24 were previously cancelled without prejudice or disclaimer, the Examiner's rejections are moot.

The Examiner has rejected claims 16-21 under 35 U.S.C. 112, second paragraph, as allegedly indefinite for reciting the reference to a table or figure. The Examiner has indicated that the figures and tables must be depicted in the claims. Soley to expedite prosecution, Applicants have amended claims 16-21 to include the recited figures or tables. However, Applicants respectfully submit that these claims were written in accordance with M.P.E.P. 2173.05(s). Claims that are written to incorporate by reference a specific figure or table are not improper and are not considered indefinite. Applicants respectfully submit that M.P.E.P. 2173.05(s) provides full support for drafting claims to incorporate by reference to a specific figure or table, where "there is no practical way to define the invention in words and where it is more concise to incorporate by reference than duplicating a drawing or table into the claim." It should be noted that now each of claims 16-20 take up an entire printed page, instead of 2-3 lines. Accordingly, Applicants respectfully submit that these claims present a situation where there is no practical way to define the invention in words and where it is far more concise to incorporate by reference than duplicating a drawing or table into the claim. Applicants approve any Examiner's Amendment that would cancel the figures or tables depicted in the amended claims.

Claim 22 was rejected for recitation of the term "isolated." Applicants respectfully submit that the use of the term "isolated" in the context of the present invention is well understood and commonly used in the art. A definition of the term

U.S. Application No.: 10/048,123
Group Art Unit No.: 1625

"isolated" from The American Heritage® Dictionary of the English Language: Fourth Edition. 2000 (a copy of which was provided with the Information Disclosure Statement filed September 3, 2003), is "to separate (a substance) in pure form from a combined mixture." The Examiner questions "How isolated is the polymorph?" Applicants respectfully submit that any restriction on the term "isolated" (e.g. partially isolated) implies that the compound is not isolated but is admixed with other compounds, solvents or materials. Accordingly, when the term "isolated" is used to describe the compound of claim 22, the term indicates that only the solid maleate polymorph is present and that no other compounds, solvents or materials are admixed therewith. Based on the doctrine of claim differentiation, this further indicates that the compound described in claim 15 (and claim 34) may be isolated or may be present as a mixture with other compounds, solvents or materials. Applicants respectfully submit that the term "isolated" in the context of the present invention is not indefinite and, accordingly, respectfully request withdrawal of the objection to claim 22.

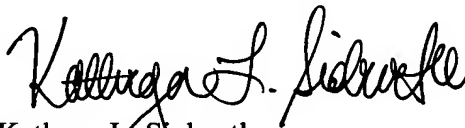
The Examiner has also rejected claims 36-41 under 35 U.S.C. 112, first and second paragraphs. Applicants respectfully traverse these rejections. However, to expedite prosecution, Applicants have cancelled these claims the subject application and will continue the prosecution of the subject matter of these claims in a subsequently filed continuation or divisional application.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the subject application is in condition for allowance. If the Examiner has any objections or concerns, the Examiner is respectfully requested to contact Applicants' undersigned attorney to resolve such issues and advance the case to issue.

U.S. Application No.: 10/048,123
Group Art Unit No.: 1625

This Amendment is being filed together with Petition for Extension of Time. In the event that these papers get separated, this constitutes a Petition for Extension of Time for the minimum period required to effect timely filing of this Amendment, together with an authorization to charge any fees under 37 C.F.R. §1.16 or §1.17 which may be required by this paper to Deposit Account No. 19-2570.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathryn L. Sieburth". The signature is fluid and cursive, with the first name "Kathryn" being more prominent.

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